

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 97 of the) RM-
Commission's Rules to Prohibit Granting)
Licenses in the Amateur Radio Service to)
Convicted Felons)

Received & Inspected
MAY 25 2011
FCC Mail Room

To: The Commission

PETITION FOR RULE MAKING

I, Bernard J. Parker, hereinafter "Petitioner" respectfully submits this PETITION FOR RULEMAKING to amend the FCC Rules governing Amateur Radio Service pursuant to Section 1.401 of the Commission's Rules (47 C.F.R. § 1.401). Petitioner has been an FCC licensed amateur radio operator for twenty nine (29) years, is an "Extra Class" licensee (K5BP). Petitioner also was granted a First Class Radiotelephone Operator license with Radar Endorsement in 1976. Petitioner has held a Dallas County Radio Amateur Civil Emergency Service (RACES) appointment since 1984 and a Denton County Amateur Radio Emergency Service (ARES) membership for over 20 years. Petitioner hereby requests amending Part 97 of the commission's rules as to prohibit convicted felons from holding an amateur license. The proposed modified rules are as set forth in *Appendix A* here to.

INTRODUCTION:

One the biggest scandals in amateur radio emergency volunteer service in North Texas broke in early 2010 when it was discovered that the highest ranking leader in

No. of Copies rec'd 0 + 9
List A B C D E
11-26 WTB

The Amateur Radio Emergency Service (ARES) and Radio Amateur Civil Emergency Service (RACES) in the area, L. D. Carpenter Jr. was found to be a convicted criminal¹. Mr. Carpenter holds the amateur call K5LD and is the trustee/custodian of the Dallas County Office of Security and Emergency Management (OSEM) club amateur license WD5OEM.

BACKGROUND:

L. D. Carpenter Jr. was a former Garland Texas City Councilman and James Toler was the former Garland Texas Mayor. Those two were among the hundred or so that were convicted in what became known as the I-30 Condo Scandal². After the scandal broke facts came to light that Mr. Carpenter used lies, deception and character assassination to obtain his positions in both RACES and ARES. Specifically the greatest deception was the concealment of his criminal background. Both Texas State RACES and Local Dallas RACES have rules that prohibit felons from participating in their organizations³.

While the exact circumstances will never be known, in 2006 Mr. Carpenter persuaded an official in Dallas County that the existing Dallas County RACES officer, which had done a perfectly good job for almost 30 years, needed to be replaced. In a phone conversation with me Mr. Carpenter, in his own words, accused the existing Dallas County RACES radio Officer of sending “incriminating” e-mails.

At the February 2009 Skywarn Training School, I distributed an open letter⁴ complaining about Mr. Carpenter’s activities pointing out “examples of very poor radio operating that demonstrate a complete lack of any experience in emergency radio operation”. I sent the President of the American Radio Relay League an expanded,

detailed version of the letter further describing Mr. Carpenter's activities as "the largest man made disaster ever in Dallas County RACES history [to] strike the Dallas RACES organization. One might question why I was complaining to the ARRL about RACES. At that time Mr. Carpenter held leadership positions in both RACES and ARES and held his radio nets as a combined RACES and ARES operation. Both the letters were written prior to the revelation of Mr. Carpenters criminal conviction. The only response I ever received was an e-mail from Bill Swan about the February 2009 open letter distributed at the Skywarn School. He was the local North Texas ARRL Section Emergency Coordinator at that time. Mr. Swan never took any corrective action against Mr. Carpenter.

When the scandal broke out in early 2010 about Mr. Carpenter's criminal conviction, I filed a complaint with American Radio Relay League headquarters only to find that ARRL has no national policy whatsoever prohibiting convicted felons from participating or leading their Amateur Radio Emergency Service.

DISCUSSION:

In most states, a felony conviction renders one ineligible for professional licenses in the health care, public safety, educational, and engineering fields. In most states, having a felony conviction does not specifically prohibit one from becoming an attorney. However, in all the cases that I have researched, an applicant to the bar must reveal his conviction. It is up to the bar to review the particulars of the felony. If the particular felony is determined not to be a crime of moral turpitude then the applicant is eligible to go under review as a possible law candidate. It will then be determined if that individual has rehabilitated himself and has sufficient moral character to be eligible to become a

member of the bar. If an applicant fails to reveal a past felony and it is later discovered, the act of concealing the conviction from the bar can be regarded as a far more serious infraction than the felony itself and usually results in immediate dismissal from the bar.

There is one notable prohibition of convicted felons on FCC form 605.

Under General Certification Statements section 4 reads:

“The Applicant/Licensee certifies that neither the Applicant/Licensee nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance.”

This certainly is a step in the right direction. This begs the question. Why are convictions of drug felonies grounds for denial of an amateur license but murder, child molestation, kidnapping, rape, robbery, fraud, conspiracy et al. are not reasons for denial of an amateur license?

I say that allowing convicted criminals in the amateur radio service is contrary to the basis and purpose of part 97.1 (a) of the FCC rules.

“Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.”

Amateur operators volunteering in emergency communications service often:

Have access to valuable government property,

May serve in secure areas where access is restricted to personnel requiring law enforcement background clearances.

Are highly visible to the public where their actions must reflect favorably upon the emergency organization they represent.

The FCC has the authority to hold Administrative Sanctions under 47 U.S.C. § 312. The FCC can issue an Order to Show Cause that initiates a hearing proceeding to determine if an Amateur Radio licensee is qualified to remain an FCC licensee or should face license revocation. The FCC often cites as basis for an Order of Revocation in a hearing proceeding:

“The Commission's character policies provide that any felony conviction is a matter predictive of licensee behavior and is directly relevant to the functioning of the Commission's regulatory mission.”

The above policy statement was particularly accurate in foretelling Mr. Carpenter's subsequent behavior. After the news broke in January 2010 about Mr. Carpenter's criminal background he resigned both his leadership positions in RACES and ARES. Then some time around the summer of 2010 after a new Director of the Dallas County Office of Homeland Security and Emergency Management was hired, Mr. Carpenter again obtained his former position of the Dallas County RACES Radio Officer. He again concealed his criminal background. When his criminal background came to light again he was subsequently removed from that position. In the spring of 2011 he appeared on a local TV station as a “ham radio liaison” for their weather forecasting department supposedly wearing a Dallas County uniform shirt for the station. Again, after his criminal background was discovered he was removed from that position.

While there are rules in place to address an Amateur licensee who has been convicted of a felony after an Amateur license has been granted, it does nothing to prevent a convicted felon from attempting to obtain an Amateur license after a felony conviction. Other than the previously noted drug conviction exception, under the current

FCC Amateur rule structure there is no requirement to reveal any felony conviction nor is there any prohibition against having convicted felons holding an amateur license.

The solution is simple. All that needs to be done is require a statement on form 605 that states:

*“certifying the applicant has not been convicted of any felonies or
be the subject of pending felony charges”*

Falsification of this certification is covered under 47 U.S.C. § 312

(a) The commission may revoke any station license or construction permit-

(1) for false statement knowingly made either in the application or in any statement of fact which may be required pursuant to section 308

One argument against this may be that this puts an unnecessary burden on the FCC now requiring it to run background checks on Amateur licensees. I am not asking the FCC to do that. What this does is put a system in place where, if a convicted felon applies for a license, obtains it and conceals his conviction he is automatically in violation of the FCC rules. There would be no need for court hearings as the FCC would have revocation power by rule. This in effect, would be an honor system. I would argue the honor system is glue that keeps the Amateur Radio hobby alive, as the amateur radio airwaves have little tolerance for dishonorable, discourteous operators. This would provide a means for the good amateurs to keep out convicted criminals in the first place, and clean their ranks of them when they are discovered, instead of allowing them to continue to destroy the hobby.

One may also argue that a criminal has served his time, why punish him forever by denying him an amateur license. Lacking an amateur license does not prevent any one

from living a good productive life and caring for a family. The vast majority of Americans do not have an Amateur License. An Amateur license is a privilege granted by the FCC. Why should we grant convicted criminals any special privilege?

Another issue may be what would be done about convicted criminals who already have an amateur radio license. I'm not requesting any specific *ex post facto action* at this time. The commission still has the option of holding a "character hearing" of a convicted felon should the commission decide that individual should show cause why his license should not be revoked.

CONCLUSION:

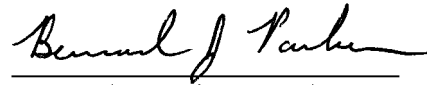
Dallas County REACT (originally a CB emergency organization), the American Red Cross, the Boy Scouts of America, FEMA, Dallas County RACES, Texas State RACES, Denton ARES in the DFW area, all Public Safety agencies known to me in the North Texas area require either background checks or a signed certification that the individual applicant has no criminal background. There is even a local carpet cleaner company that advertises it runs background checks on its employees.

I reiterate, in this post 911 era of Homeland Security it defies logic for the FCC to continue to allow convicted criminals unfettered in to the Amateur Radio Service, where it then requires court proceedings to get rid of them.

I have shown just one example of the damage just one convicted criminal can do to the local amateur radio community. Criminals have no place in the Amateur Radio Service. I urge the FCC to do the right thing and not allow criminals entry in the Amateur Radio Service.

May 20, 2011

Respectfully Submitted,

A handwritten signature in cursive script, reading "Bernard J. Parker". The signature is written in black ink and is positioned above a horizontal line.

Bernard J. Parker, "Petitioner"

Bernard J. Parker (K5BP)
702 Carlisle Court,
Lake Dallas Texas 75065

Phone: 214-693-0188
Email: k5bp@arri.net

Footnotes

1. "EX-GARLAND COUNCILMAN CONVICTED IN CONDO CASE." The Dallas Morning News 28 01. 1988. < <http://www.dallasnews.com/archive/> >.

Refer to Exhibit 1 for text

2. Brown, Chip. "I-30 condo jury convicts 4 who pillaged S&Ls." Houston Chronicle 07 11. 1991. Business. < http://www.chron.com/CDA/archives/archive.mpl/1991_820922/i-30-condo-jury-convicts-4-who-pillaged-s-amp-ls.html >.

Refer to Exhibit 2 for text

3. "RACES of Dallas County, Texas and Participating RACES Entities Organization and Procedures Manual" 08 09. 2008

Section 7. Criteria for Denial, Termination, or Non-renewal of appointment

7.1.2. Conviction of a felony offense or of theft at any level;

"State of Texas Radio Amateur Civil Emergency Service (RACES) Plan and SOP" 15 04. 2007

Section IV. Administration

B.1. Eligibility

d. Never have been convicted of a felony.

4. "Don't Mess With RACES" Open Letter distributed at the Garland Texas Skywarn Storm Spotter School. 02. 2009

Refer to Exhibit 3 for text.

Appendix A

The proposed rule change is as follows:

Add the following line under section 97.5 Station license required

To be eligible for a station license the person must not be a convicted felon, or be the subject of pending felony charges.

This would require the addition of a disclaimer line in Form 605

“certifying the applicant has not been convicted of any felonies or be the subject of pending felony charges”

This would be enforceable by the signature on the form 605 attesting to:

The Applicant/Licensee certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

This proposed rule change would not obligate the FCC to run background checks on license applicants. It would allow the FCC to take swift action when a convicted felon is found in any other discovery process.

Exhibit 1

*

The Dallas Morning News*

*EX-GARLAND COUNCILMAN CONVICTED IN CONDO CASE *

The Dallas Morning News (DAL) + _____
Published: January 28, 1988

A federal court jury in Dallas on Wednesday convicted a former Garland City Council member on criminal charges arising from an investigation into questionable financing of condominium developments near Lake Ray Hubbard.

L.D. Carpenter Jr., a member of the Garland council from 1982 to 1984, was found guilty of conspiracy and two counts of making false statements about his finances to obtain loans from Empire Savings and Loan Association of Mesquite. The jury deliberated less than two hours before reporting to U.S. District Judge Barefoot Sanders that it had reached a verdict.

A federal grand jury indicted Carpenter last October, accusing him of lying on a loan application that he had \$85,000 in cash assets and a monthly income of \$8,333.

The indictment also accused Carpenter of soliciting a "false and fraudulent appraisal" in May 1983 when he sold a 2.9-acre parcel of land in Mesquite.

The property was part of a 98.7-acre land-flip transaction that is still under investigation.

Carpenter is among 106 people who have been charged with crimes since the federal grand jury investigation began in 1984.

Carpenter, who is scheduled to be sentenced by Sanders on Feb. 25, faces a maximum of nine years' imprisonment and a \$20,000 fine.

Copyright 1988 The Dallas Morning News Company

Exhibit 2

I-30 condo jury convicts 4 who pillaged S&Ls

CHIP BROWN Associated Press

THU 11/07/1991 HOUSTON CHRONICLE, Section Business, Page 1, 2 STAR Edition

MIDLAND -- Flamboyant Dallas developer D.L. "Danny" Faulkner and three co-defendants were convicted Wednesday of looting \$165 million from five thrifts through fraudulent land deals along Interstate 30 east of Dallas in the early 1980s.

The so-called I-30 condo scandal was one of the early harbingers of the coming thrift crisis and was blamed for the \$284 million failure of Empire Savings and Loan in Mesquite in 1984, at the time the largest thrift bailout ever.

Faulkner, who claims to be illiterate, was convicted on 42 of 45 counts, including operating a continual criminal enterprise. That conviction would force him to forfeit \$40 million in profits from the deals.

Also convicted were former Garland Mayor James Toler, on 41 of 46 counts; former thrift Chairman Spencer Blain Jr., 34 of 35 counts; and appraiser Arthur Formann, 21 of 22 counts.

Toler could be forced to hand over \$38 million in profits, and Blain, who was chairman of Empire Savings and Loan of Mesquite, stands to lose \$22 million.

The jury, which deliberated 4 1/2 days, still must decide how much of the profits the men will have to forfeit.

In addition to the forfeiture of profits, Faulkner faces a 201-year prison sentence and \$250,000 in fines. Toler faces 196 years in prison and a \$250,000 fine, and Blain faces 188 years in prison and a \$208,000 fine. Formann's penalty may be 54 years in prison and \$102,000 in fines.

The defendants showed no emotion as the verdicts were read in the Midland federal courtroom. All four later said they would appeal.

"I was surprised because I'm not guilty," Faulkner said moments after the verdict. "I thought me and my son was just doing normal business.

"I wouldn't have had my name all over the place, spent my money there and lived there if I thought I was doing something illegal," Faulkner said.

"I would have hid my money in offshore accounts like Clifford Sinclair."

Sinclair, a vagabond land developer who pleaded guilty in the case, was the prosecution's star witness.

"I don't know that we were ever in this case," said Michael Fawer, Faulkner's attorney. "I thought we had proved quite convincingly that their case was fatally flawed, but, quite candidly, the money overwhelmed them (the jury)."

"And they believed Clifford Sinclair's testimony. They thought he was credible, which really surprises me," Fawer said.

Billy Ravkind, Blain's attorney, said the defendants were hurt by the jury's anger over the thrift crisis.

"This jury knew everything they needed to know about the problems in the savings and loan industry. And they sent a message," Ravkind said.

But Chief Prosecutor Terence Hart said, "I don't see people that made over \$120 million as victims. It's clear they manipulated the system to their advantage."

"This was not a trial of economic times going bad," said Tom Melsheimer, another assistant U.S. attorney. "This was a case of men going bad."

The convictions come nearly two years after a jury first heard the case but failed to reach a verdict. The initial trial in Lubbock in 1989 lasted nearly seven months with testimony from more than 120 witnesses but ended in a mistrial when jurors said they were hopelessly deadlocked.

The case epitomized the greed of the 1980s and was one of the first signals that the rest of the thrift industry was in trouble, according to prosecutors.

The government claimed Faulkner and Toler arranged illegally inflated appraisals for hundreds of condominium developments along the Interstate 30 corridor and then paid off bankers like Blain to give them massive construction loans that were simply pocketed and never intended to be repaid.

Prosecutors said the defendants lavished private jets, expensive watches and a \$4 million mansion on themselves with the money they borrowed ostensibly to buy land and condominiums.

At the center of the case was Faulkner, a man who claims he dropped out of school at age 12 and never learned to read or write.

Faulkner, struggling as a house painter, got his big break when he was hired in the 1970s to paint the luxury boxes at Texas Stadium, home of the Dallas Cowboys. He parlayed painting profits and connections into a real estate fortune.

His first condo development, Faulkner Point, is featured in the opening sequence on the TV show Dallas. He drove a \$150,000 Rolls-Royce, traveled in a \$4 million jet and left waitresses \$100 tips.

Defense attorneys acknowledged that their clients made millions, but said that the deals on I-30 were entirely legitimate.

The defendants claim that their empire on I-30 was the victim of both Texas' economic collapse in the mid-1980s and of the government's star witness, Sinclair.

Sinclair pleaded guilty to conspiracy and fraud charges in the I-30 case in 1986 and is serving a 13-year prison term.

Defense attorneys argued that Sinclair orchestrated the I-30 scheme and dragged Faulkner and Toler in unknowingly. They claim Sinclair framed the defendants to get his own prison sentence reduced.

U.S. District Judge Lucius Bunton, who is well known for moving his cases quickly, guided the retrial at breakneck speed compared to the first.

Prosecutors presented 4 1/2 weeks of testimony and several dozen witnesses. Defense attorneys, who presented no case in Lubbock, spent four days bringing witnesses to the stand, including Toler and Formann.

The deals along the I-30 corridor led to Empire's \$284 million failure in 1984.

Federal agencies created a special task force of investigators and attorneys to unravel the deals. The government has charged 115 people in connection with wrongdoing at Empire Savings and won 108 convictions.

Exhibit 3

It's Free!!! Take One!

Don't Mess with Dallas RACES!

For over 30 years Dallas City/County RACES volunteer Ham operators have served the citizens of the area from storm spotting, to aiding in disasters such as the Lancaster tornado, and the Flight 191 plane crash. Until 2007, the City of Dallas and the County of Dallas were organized under a single RACES organization. Then, under the new Dallas County Emergency Management Director, Robbie Robinson, Dallas County RACES was split from Dallas City RACES. L. D. Carpenter, K5LD, was appointed the new Dallas County RACES and ARES Radio Officer. And just recently L. D. Carpenter was appointed ARRL District Emergency Coordinator for District 6 ARES. This is the biggest change in RACES/ARES in this area in over thirty years.

When the primary Dallas City/County RACES officer for Dallas for over twenty years is stumped by questions about this development on the Dallas RACES net, something is very wrong here! That is far from the only thing wrong here. The implementation of the new County RACES by the new RACES Radio Officer was very unprofessionally done as his actions clearly demonstrate. Nobody in the Dallas Amateur Radio club was notified prior. This is significant as the DARC 146.88 MHz repeater has been the primary Dallas City/County RACES repeater for over 30 years. Instead, the new RACES Radio Officer could not wait to notify the local media, and the National Weather Service and other Clubs about the new RACES organization.

One of the first thing the new RACES Radio Officer should have done, besides notifying the DARC board of Directors of his intentions, is to secure the use of another repeater frequency for Dallas County RACES (as opposed to City) use. All amateurs know it is impossible for two emergency and/or Skywarn nets to run on the same frequency. This means either the City or County net has to leave the frequency or interfere with each other. Who makes that decision? If the DARC is providing the repeater to RACES the DARC has the right to know. DARC has the W5FC license to protect. More importantly, DARC owes the public we've served to continue provide the best RACES Skywarn operation possible. The DARC has provided Dallas City/County RACES radio communication for over 30 years without costing the taxpayers a single dime!!!

The new RACES Radio officer's inability to address the above issue forced the Dallas Amateur Radio Club to have a emergency board meeting in July 2007 to address the issue by issuing an agreement supporting the original Dallas (now city) RACES as the primary user on the DARC repeater. The County and a few other localities had provided

grants to upgrade the Garland Amateur Radio Club Repeater. The original intention was to use this Repeater as the Primary Dallas County RACES repeater.

The Garland Amateur Radio Club declined granting primary use of the repeater to Dallas County RACES but allowed secondary usage as Garland already has a RACES and, it too, is over 30 years old. Anytime there are two separate nets covering an overlapping area we run a higher risk of getting misinformation as information is passed from one net to another. Even worse vital information can be missed by inadvertently not being passed to the other net. So how has this split up benefited the public we serve?

Regarding nets...Has anyone listened to the Dallas County RACES training nets? A few of the ones I have listened to were very unprofessional, borderline illegal, and downright wrong. For a specific example one net involved training amateurs to carry out duties that properly belong to paid trained public service professionals. We are not paid staff. Also there were examples of very poor radio operating that demonstrate a complete lack of any experience in emergency radio operation.

I am very concerned. I realize there is not much we, as amateurs, can do about what Dallas County decides to do. Basically we are stuck. As a Ham, I am not all opposed to Dallas County upgrading Emergency Preparedness. This is a good thing as long as it is done right. However, as a 25 + year ARRL member, I can complain to the ARRL. The ARRL has given their stamp of endorsement of this behavior by appointing L. D. Carpenter as Dallas County ARES officer and recently, ARRL District Emergency Coordinator for District 6. I have complained to The ARRL Section Manager, Tom Blackwell N5GAR, over a year ago about this very matter. He is the one in the ARRL responsible for signing off on these local appointments. Instead of having a reasoned discussion about my concerns he towed the ARRL political, bureaucratic line. He also without my knowledge or permission gave my phone number to L. D. Carpenter. It is well known Tom has had no significant participation or experience in Dallas RACES over the years. When asked why has not been active in RACES, he said it was a legal issue with the application paperwork. He is not an attorney. The right thing to do is have it brought to the attention of Dallas RACES if he was genuinely concerned. I say that one who has no experience in RACES/ARES sure does not have any business approving those types of appointments. Furthermore, he full well knows this would have a major impact on Dallas RACES. He should have done the right thing and consulted with the county officials, L. D. Carpenter, and the ARRL Section Emergency Coordinator formulating a plan for a smooth transition. A large part of that would have been seeing that all parties impacted by this would be given timely notification of the decision by Dallas County to split up RACES.

Of course L. D. Carpenter did call me up afterwards, and state I am the only one causing "trouble in RACES". He claimed to have 30 years of experience in RACES. Why then, would the then current head of Dallas RACES and myself, who has been an active member of Dallas RACES for over 25 years never heard of him, on the air, or other wise participating in RACES? I asked him the obvious question. Why did he not notify the existing Dallas City/County RACES officer or Net Controls of the RACES split in a timely fashion? He claimed he did send e-mails to Johnny Davis K5JD, the existing

RACES Radio officer and received “incriminating e-mails” back from Johnny. Johnny is one of the nicest guys you will ever meet, and a fine dedicated Ham. I know he would not do that. L. D. said the he had also sent e-mails to the net controls but they were being “blocked”. Even if this were true, is e-mailing the truly right professional protocol to notify officials that needed to be notified about a major change such as this?

For almost a year I did not pursue the matter. I had hoped that perhaps over time these issues would eventually be resolved. They haven’t. To this day, Dallas County RACES has not submitted any plans on what their intentions are or why they are needed. So, I contacted Bill Swan K5MWC the ARRL Section Emergency Coordinator who was responsible for granting L. D. the ARRL appointments in the first place, about a week ago. To his credit, we engaged in a very spirited and intelligent conversation about this issue. He was obviously one the more experienced Hams when it comes to emergency amateur radio operation. However, to my surprise, when I asked him specifically about L. D. Carpenter’s emergency radio operation experience he did not know. He said he would have to check his “resume”. One other thing Bill kept mentioning, that ARES is the future of amateur radio and RACES may well be on its way out. I believe promoting ARES is promoting the ARRL company line, as ARRL has no control of RACES. RACES has existed in Dallas for over thirty years without ARES.

I know many Hams that are vastly more qualified for the job of Dallas County RACES Radio officer than L. D. I would sure like to know how he got the appointments. If there was any problem with the existing Dallas City/County RACES prior to 2007, I’m sure L. D. Carpenter is not the answer. I suspect the bottom line is that L. D. would like you to believe the County needs him and RACES/ARES to obtain homeland security funding. They don’t. Dallas RACES had no problems or controversies to speak of, for over thirty years until now. Many issues still need to be resolved. Have we not learned any lessons at all from the bureaucratic bumbling of Katrina? The public we serve would suffer from this, not the Hams.

If you have read this far, I thank you for your attention. Bernie Parker K5BP@arrl net